## CORRESPONDENCE.

IS A SUMMONS IN UNLAWFUL ENTRY AND DETAINER ISSUED BY A JUSTICE REMOVABLE TO THE CIRCUIT OR CORPORATION COURT?

Editor "Virginia Law Register:"

So far as my investigation goes, this question has never been passed upon by our court of last resort and the practice of our magistrates is variant. Within the recent past, two justices have in my practice reached opposite conclusions upon it. I submit the following views in support of the negative.

Section 2716 of the Code of Virginia is the first section in Chapter CXIII, entitled "Of the Summary Remedy for Unlawful Entry or Detainer." So much of it as is pertinent to the present inquiry is as follows:

> "* * * or, in any case where possession of any house, land or tenement is unlawfully detained by the tenant, or some person claiming under him, the lease of such tenant being originally for a period not exceeding one year, or for the time such tenant is employed by the landlord as laborer, the landlord, or other person entitled to the possession, may present to any justice of the county, city or town in which said premises are situated, a statement, under oath, of the facts which authorize the removal of the tenant or other person in possession (describing said premises), and thereupon the said justice shall issue his summons against the person or persons named in the said affidavit."

The motion to remove is predicated upon Section 2939 of the Code, which is the first section of Chapter CXL, entitled "Of Warrants for *Small Claims.*" The portion of the section relating to removals is as follows:

> "In every case cognizable by a justice, where the *amount or thing* in controversy exceeds the sum or value of $20, the justice, shall, upon the application of the defendant and upon affidavit that he has a substantial defence thereto, at any time before trial remove the cause, and all papers thereof to the circuit court of the county," etc., etc.

According to familiar principles of statutory construction this language must be read in connection with what precedes it, and when so read, it will be seen that a proceeding of unlawful entry and detainer is not within its scope. The first paragraph of the statute limits its application to:

Any claim to

(1) Specific *personal* property;

(2) Any *debt, fine* or other *money,*

(3) *Damages* for breach of any contract, or

(4) *Damages* for any injury done to property, real or personal.

These are the only cases triable by a justice under this chapter.

Now a writ of unlawful entry and detainer is certainly not a claim

to (1) specific personal property, nor (2) to a debt, fine or other money; nor (3) to *damages* for breach of contract, nor (4) to *damages* for any injury done to property, real or personal. On the contrary, it is a proceeding *to obtain possession of real property,* which can not without straining the sense be said to be an *"amount* or *thing* in controversy exceeding the sum or value of twenty dollars."

An examination of the standard works upon Virginia practice, such as Minor and Barton, fails to disclose the slightest suggestion that such a case can be removed. On the contrary, all treat it as the "summary remedy" prescribed in the title to Chapter CXXIII, § 2716, in which the defendant may invoke the action of the Circuit or Corporation Court, but only by appeal within ten days after bond and security given. The proceeding is separate and distinct from those to recover "small claims." It seems reasonable to suppose that had the legislature, in formulating the procedure, intended to grant the right of removal, it would have so provided, and that its silence upon the point must be understood to mean that it intended the remedy to be summary indeed and not dilatory and that it should be construed to mean what it says—that upon five days' notice the plaintiff can have a trial of his claim when the lease is for a period not exceeding one year; when it exceeds that time, his application *must* be to the Circuit or Corporation Court.

The affirmative view is manifestly based upon the apparently broad language *"every* case cognizable by a justice," but according to familiar principles, this expression must be construed to mean "every such case," or "every case of the kind hereinbefore mentioned." This is clearly shown in Judge Whittle's opinion in Gates *v.* Richmond, 103 Va. 702, a case involving, it is true, the construction of a penal ordinance, but nevertheless declarative of the general principles in point:

> "There are two other kindred principles of construction to be considered in arriving at a correct interpretation of this ordinance, namely: that of *noscitur a sociis* and *ejusdem generis.*
>
> "The former rule is succinctly stated as follows: 'It is a fundamental principle in the construction of statutes that the meaning of a word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated. Language though apparently general, may be limited in its operation or effect, where it may be gathered from the intent and purpose of the statute that it was designed to apply only to certain persons or things, or was to operate only under certain conditions.' 26 Am. & Eng. Ency. Law, p. 608; citing among other cases Orange & Alex. R. Co. *v.* Alexandria, 17 Gratt. 176.
>
> "The rationale of the principle of *ejusdem generis* seems to be, that if the legislature had intended the general words to apply, uninfluenced by the preceding particular words and without restriction, it would in the first instance have employed a compendious word to express its purpose. Rex *v.* Wallis, 5 Tenn. R. 375. The rule is illustrated and applied in the comparatively re-

cent case of American Manganese Co. *v.* Va. Manganese Co., 91 Va. 272, 21 S. E. 466, where this court, in construing section 3299 of the Code, with respect to special pleas of set-off, held, that the language, 'or any other matter,' occurring in a statute which in part reads: 'or any other matter as would entitle him (the defendant) either to recover damages at law from the plaintiff * * * or to relief in equity, in whole or in part, against the obligation of the contract,' is restricted to the preceding enumerated defenses and that no set-off can be relied on by the defendant that does not grow out of the original contract. The court says: 'One of these rules of construction is that general words may be limited to the same genus or class as the specific words which precede them. In Sutherland on Statutory Constr. (section 268) it is said that where there are general words following particular and specific words, the former must be confined to things of the same kind. In Broom's Legal Maxims (side page 651) the rule is laid down as follows: 'Where a particular class (of persons or things) is spoken of, and general words follow, the class first mentioned is to be taken as the most comprehensive, and the general words treated as referring to matters *ejusdem generis* with such class; the effect of general words, where they follow particular words, being thus restricted.' Sedgwick in his work on Construction of Statutes (page 361) says: 'Where general words follow particular words, the rule is to construe the former as applicable to things and persons particularly mentioned.' The decisions of the courts fully sustain the text-writers, that this is the true rule of construction in such cases, subject to certain limitations not necessary to be mentioned here.' Lynchburg *v.* N. & W. R. Co., 80 Va. 237; C. & O. Ry. Co. *v.* Bank, 92 Va. 495, 23 S. E. 935, 44 L. R. A. 449."

So in Wells *v.* Commonwealth, 107 Va. 834, the court, following the principle of Gates *v.* Richmond, narrowed the meaning of the expression "by warrant" in § 712 of the Code to "by civil warrant" and sustained a motion to quash a criminal warrant. It also intimated its approval of a similar construction of the words "any judgment" in § 3799 of the Code, relating to violations of the Sabbath.

My conclusion is, therefore, that a summons in unlawful entry and detainer issued by a magistrate is not removable but must be proceeded in to judgment before him.

GEORGE BRYAN.

Richmond, Va.